

### **REMARKS/ARGUMENTS**

Claims 1, 2, 4-6, 29, 35-37 have been examined on the merits. Claim 29 has been amended to more clearly define the claimed inventions. No new matter has been added.

#### **Interview Summary**

The undersigned would like to thank the Examiner for the telephonic interview on November 17, 2003. The Examiner clarified during the interview that the rejection under 35 U.S.C. §102(b) in view of "Wysocki et al. – 2000" should have been a rejection based on the abstract cited on Applicants' PTO Form 1449, reference AP to Bazemore et al.

#### **Rejections under 35 U.S.C. §112**

Claim 29 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failure to recite where or how the effective amount of the composition is added. Applicants traverse this rejection because those skilled in the art having read the specification would appreciate how to use the method for reducing animal waste malodor by using the compositions recited in claims 20-22 or 24. However, solely for purposes of even more clearly reciting the claimed invention and to advance prosecution, the claim has been amended. Applicants respectfully request reconsideration and withdrawal of the rejection.

Claims 1, 2, 4-6, 29, 35-37 stand rejected under 35 U.S.C. §112, first paragraph, as allegedly lacking enablement. As best understood, the Office Action asserts that it would require undue experimentation to determine whether esters (other than ethyl esters) are effective cross adapting agents. Applicants traverse this rejection.

The Office Action fails to establish that the present disclosure does not satisfy the enablement requirement and that further experimentation would be necessary, let alone "undue." Consideration of the breadth of the claims, the nature of the invention, the state of the prior art, the level of one of ordinary skill, the level of predictability in the art, the amount of direction provided by the inventor, the existence of working examples and the quantity of experimentation needed to make or use the invention based on the content of the disclosure, as required by MPEP §2164.01(a), would lead one of skill in the art to conclude that no undue experimentation is required to practice the claimed invention. Indeed, the

determination that “undue experimentation” would have been needed to make and use the claimed invention is “not a single, simple factual determination.” (MPEP §2164.01(a)). Applicants respectfully request reconsideration and withdrawal of the rejection because one of skill in the art having read the specification and claims would know how to make and/or use the full scope of the claimed invention without undue experimentation.

### Rejection under 35 U.S.C. §102

#### A. Pierce Reference

Claims 1, 5, 29, 35 and 36 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by Pierce et al., “Cross-adaptation of sweaty-smelling 3-methyl 2-hexenoic acid by structurally-similar, pleasant smelling odorant” *Chem Senses*, 1995, 20, pp.401-11 (“Pierce reference”). Applicants traverse this rejection.

The Office Action mistakenly suggests that the use of an ester of 3-methyl 2-hexenoic acid, as discussed in the Pierce reference, anticipates the present claims because it is a cross-adapter that “acts as both odor-reducer and cross adapter.” (Office Action at 2). This interpretation, however, this is contrary to how each term “cross adapter” and “odor reducer” is defined and exemplified in the specification, for example on pages 5-6. The term “odor-reducing agents” is exemplified by powder activated carbon (PAC), bismuth compounds and CCC; “cross-adapting agents” includes, for example, the ethylesters of 3-methyl-2-hexenoic acid (3M2H) and their homologues.

Therefore, although the Pierce reference discusses 3-methyl-2-hexenoic acid, a cross-adapter, there is no disclosure or suggestion of an odor reducing agent, as defined in the specification, let alone of using a cross-adapter *and* an odor-reducer. It is improper for the Office Action to assert that the claims, which recite “adding an effective amount of an odor-reducing agent and an effective amount of a cross-adapting agent,” are anticipated by discussion of only a cross-adapting agent.

Applicants respectfully traverse the suggestion that claim 35, which recites “adding an effective amount of a cross-adapting agent to a locus,” is anticipated by the presence of an alleged odor-reducing agent in a bottle. Claim 35 depends, ultimately, from claim 31, which is directed to a “method for reducing animal waste malodor at a locus, said method comprising adding an effective amount of an odor-reducing agent to said locus.” As set forth

in the specification on page 6, the term "locus" refers to any site containing animal waste and includes, without limitation, pig pens, horse stables, litter boxes, and other bedding materials, ponds, stand-alone human facilities, compost facilities for mushroom farmers and human waste-treatment facilities. The term locus as used herein does not include ostomy and colostomy bags for human use. Thus, an interpretation of claim 35 such that adding an effective amount of an odor-reducing agent to a "locus" would be anticipated by the presence of the agent in a bottle, is not reasonable. Applicants respectfully request reconsideration and withdrawal of the rejection.

**B. Bazemore Abstract**

Claims 1, 2, 4-6, 29, 35-37 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by Wysocki et al 2000 ("Wysocki reference"). As was clarified during the telephonic interview, this rejection allegedly should have been in view of Bazemore et al., "Ameliorating Swine Slurry Odors: an Analytical and Sensory Approach," *Chem. Senses* Vol. 25, No. 5, pp. 593-688 (number 50 at p. 611) ("Bazemore Abstract") (copy enclosed herewith).

Applicants respectfully submit that the Bazemore Abstract is not a proper reference under 102(b). 35 U.S.C. §102(b) states, in relevant part, that

a person shall be entitled to a patent unless - (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States . . . .

The present application claims benefit of priority of a provisional application filed on June 23, 2000. Therefore, in order to qualify as prior art, a printed publication must be dated at least as early as June 23, 1999 (*i.e.* one year before the effective filing date). As evidenced by the enclosed information, the publication date of the Bazemore Abstract is October 2000. Therefore, the Bazemore Abstract was **not** a "printed publication in this or a foreign country **more than one year** prior to the date of the application for patent." Therefore, the Bazemore Abstract is not a proper prior art reference. Applicants respectfully request reconsideration and withdrawal of the rejection.

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**PATENT**

**Conclusion**

Applicants respectfully submit that the foregoing constitutes a *bona fide* attempt to advance prosecution. Should there be any questions, the undersigned invites the Examiner to contact her at the number below. Applicants submit that the claims are in condition for allowance and earnestly solicit a Notice of Allowability.

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